IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMANUEL R. WEIMAR; and, CHRISTINE M. WEIMAR; Plaintiffs,	CIVIL ACTION
v.	No.: 16-cv-06188-JS
CARRINGTON MORTGAGE SERVICES, LLC; Defendant.	

PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs submit this Reply to Defendant's Response in Opposition [at ECF No. 15] to Plaintiffs' Motion for Partial Summary Judgment.

A. Defendant Has Not Refuted that $737 of Billed Attorney's Fees and Costs Were Actually Due to the Weimar's Counsel – And Were Not Incurred by Defendant, its Predecessor or its Principal

In trying to justify the attorney's fees and costs charged to the Weimars, Defendant simply ignores the math presented in Plaintiffs' moving papers, its own transaction register, and Judge McHugh's court order requiring payment to the Weimar's counsel; all of which prove that Carrington tried to get back from Plaintiffs the $737 that the Bucks County Court ordered Deutsche Bank to pay to the Weimar's counsel. See Defendant's Opposition (ECF No. 15-6), copy of invoice reflecting the wrongful charge of $737. Although Defendant superficially attempts to justify its position by simply relying of Shapiro and DeNardo's invoices as a basis on which to bill Plaintiffs, Defendant feigns ignorance that this $737 charge is a match with the amount that was to be paid to the Weimar' counsel – not charged against them. Defendant has failed to come forward with any facts to challenge the foregoing. Therefore, on this point alone, Plaintiffs are entitled to partial summary judgment.

B. Defendant's Act 6 Arguments are Precluded

In Section A.2. of its opposition (ECF No. 15), Defendant attempts to relitigate the applicability of Pennsylvania's Act 6 to this case. However, this issue has already been decided against Defendant's position, and, accordingly, Defendant's arguments should not even be entertained by this Court.

Under the *Rooker-Feldman* doctrine, a losing state-court party is "barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on [a] claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994). Here, that is exactly what Defendant is attempting to wrongly do here– invite this court to review and effectively overturn Judge McHugh's ruling in the state case.

Further, under the doctrine of *Res Judicata*, any final, valid judgment on the merits by a court of competent jurisdiction precludes any future suit between the parties or their privies on the same cause of action." *Balent v. City of Wilkes-Barre*, 669 A.2d 309, 313 (Pa. 1995)). "The doctrine applies not only to claims that are actually litigated, but also to those that could have been litigated in the first proceeding, so long as they were part of the same cause of action." *Id*. Again, that doctrine fits squarely with the facts here. Accordingly, the Act 6 question stands as having already been decided by Judge McHugh in the Bucks County Court of Common Pleas.

Finally, Defendant should be estopped from arguing here that Act 6 isn't applicable in this case. It must be remembered that Deutsche Bank first appealed the decision about which

Defendant now complains to the Pennsylvania Superior Court. It then voluntarily discontinued that appeal, thereby leaving Judge McHugh's decision as the final word on the Act 6 matter. Under the doctrine of collateral estoppel, "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent cases based on a different cause of action involving a party to the prior litigation." *Montana v. United States*, 440 U.S. 147, 153 (1979). In order to succeed on a case of collateral estoppel, a party must show: "(1) the issue sought to be precluded is the same as that involved in the prior action; (2) that issue was actually litigated; (3) it was determined by a final and valid judgment; and (4) the determination was essential to the prior judgment." *In re Graham*, 973 F.2d 1089, 1097 (3d Cir. 1992). In this case, all four of these elements are present. Accordingly, Defendant's Act 6's argument should not even be considered by this Court.

C. Defendant's Voluntary Payment Doctrine, a State-Law Equitable Defense, Is Misplaced Because the Doctrine Is Preempted by the Supremacy of the FDCPA

In Section A.5. of its opposition papers (ECF No. 15) Defendant incorrectly argues that Plaintiffs' claims are barred by the "Voluntary Payment Doctrine".

Under the voluntary payment doctrine, "one who has voluntarily paid money with full knowledge, or means of knowledge of all the facts, without any fraud having been practiced upon him… cannot recover it back by reason of the payment having been made under a mistake or error as to the applicable rules of law." *Liss & Marion v. Recordex Acquisition*, 983 A.2d 652, 661 (Pa. 2009) (quoting *In re Kennedy's Estate*, 183 A. 798, 802 (Pa. 1936). Nevertheless, the voluntary payment doctrine, a state equitable defense, is preempted by the FDCPA to the extent the doctrine affords less protection to consumers than the FDCPA. See 15 U.S.C. § 1692n ("This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.") (emphasis added). Where a federal court is sitting in judgment of a federal question, it is not bound by the Erie Doctrine. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 79 (1938) ("Except in matters governed by… acts of Congress, the law to be applied in any case is the law of the state.") (emphasis added)). Where a federal statute supplies "the elements of [a p]laintiff's causes of action [such as in the FDCPA], they find no 'source in state law,' and Erie does not apply." *Cappetta v. GC Services Ltd. Partnership*, 654 F.Supp.2d 453, 464 (E.D. Va. 2009) (FDCPA action) (*citing Maternally Yours v. Your Maternity Shop*, 234 F.2d 538, 540 n.1 (2d Cir. 1956). "Thus, nothing obliges the Court here to apply state substantive law (including affirmative defenses) to th[e FDCPA]." *Cappetta*, 654 F.Supp.2d at 464. The *Cappetta* Court continued:

> Furthermore, even if the voluntary payment doctrine were applicable, the Court would be inclined to agree with *Scott v. Fairbanks Capital Corporation*, 284 F.Supp.2d 880 (S.D. Ohio 2003), and *Gonzalez v. Codilis & Assocs., P.C.*, 2004 WL 719264, at *3-4 (N.D. Ill. Mar. 31, 2004), which held that the FDCPA preempted the voluntary payment doctrine to the extent the doctrine afforded less protection to consumers than the FDCPA. *Cappetta*, 654 F.Supp.2d at 464.

Moreover, even if the voluntary payment doctrine did apply – which is doesn't for the foregoing reasons, Plaintiffs in this case paid their delinquency under protest, thus, the doctrine wouldn't be applicable in any event.

D. Conclusion

Plaintiffs' Motion for Partial Summary Judgment should be granted.

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CERTIFICATE OF SERVICE

I hereby certify that, on May 22, 2017, a copy of the foregoing PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT was served electronically upon the following party via the Court's CM/ECF system.

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